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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,036	12/22/2000	Guadalupe M. Rojas	0217.99	4213

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USDA-ARS-OFFICE OF TECHNOLOGY TRANSFER
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PEORIA, IL 61604

EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 01/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/748,036

Applicant(s)

ROJAS ET AL.

Examiner

Neil Levy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/3/03
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 40, 41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 40, 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-14, 40, 41 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-14, 40, 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejection of record is maintained.

Less than 1000 is understood, 0 is less, about 1000 is understood, 900-1100; less than about is ambiguous, and fails to define the meets and bounds of the claim or the protection desired; 1050 is less than about 1000; we are not sure if 1150 is, but it may be less than about 1000. We did not argue "substantially" to be indefinite; neither do we argue "about" – ~~we~~ cannot quantify more than about or less than about.

Claims 1-3, 5, 6, 8, 9, 12-14, 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over McPherson et al 6203811 in view of Henderson et al '94.

The rejection of record is maintained.

Although the declaration shows the high amounts, as instantly claimed to be prohibited, are effective, Henderson also included the instant dosages of the instant compounds. So we have no reason to doubt that Henderson at low doses would be different from the instant invention at the same level (less than about 0.1%, which would be Henderson's bait, at 539 and 787 ppm urea, according to applicant's declaration).

The only alternative is that what is instantly claimed is not in fact the invention – we need to have a more definitive claim, to differentiate the instant invention over the prior

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are there other ingredients required, that constitute applicant's invention, are the termites different?

Claims 1, 2, 5, 6, 13, 14, 40 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Am. Cyanamid – JP 2000-7516.

Abstract shows 4% uric acid impregnate of cellulose was attractive; palatable to termites. Termiticides may be added to baits.

Claims 1-3, 5, 6, 8, 9, 12-14, 40, 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thorne et al 5573760.

Thorne shows urea, uric acid or amino acids, with water and cellulose, provides termite control compositions, which increase recruitment, and feeding (col. 3, lines 16-23) Uric acid is shown at 0.25%-5% uric acid. The uric acid or urea, included in the formulation, would result in increased feeding, furthermore, Thorne specifically states attractant would be attainable. If one wanted to attract then it would be well within the purview of one in the art to test for the optimum level of attractancy of the urea or uric acid compositions. McPherson (above) shows this combination of bait/attractancy with termiticide to be desirable, and so it would have been obvious to one of ordinary skill in the art at the time of the instant invention to utilize attractant levels of urea and uric acid with cellulose, as determined by straight forward testing, in order to control termites.

Applicant's arguments filed on 10/07/03 have been fully considered but they are not persuasive. Applicant's arguments are addressed above. Correction of the 112

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issue and incorporation of claims 5, 6, 7 and 14 with 1 would overcome the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619.

The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Levy/LR
January 15, 2004

NEIL S. LEVY
PRIMARY EXAMINER